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MSU Extension has a web page that contains information regarding oil and gas leasing, mineral rights and other related informational topics at

http://msue.anr.msu.edu/program/info/oil_and_gas

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Got and oil/gas well on your property that is not paying you a royalty?

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There are several reasons an oil/gas well may be present, but not producing a royalty. The old adage an ounce of prevention is worth a pound of cure is recommended for mineral owners wanting to prevent this from happening.

As a [Michigan State University Extension educator](#) the author receives a number of inquiries from landowners that have oil and gas wells on their property, but are not currently receiving a royalty. In some instances they have not received a royalty in years. They want to know why the well is allowed to still be present if it is not paying them anything? Is there a way to cancel the oil and gas lease because there are no royalties currently?

Here are some reasons a well or multiple wells can be present, not paying a landowner and in compliance with Michigan's oil and gas regulations or with the underlying oil and gas lease.

The well may not be earning enough to pay a royalty regularly. When an oil/gas well is completed, before being paid, the mineral owner is asked to sign a [division order](#). This should re-state the mineral owner's share of the well, and thus their share of the proceeds.

It is very common for the division order to allow the company to accrue royalties until a designated amount is accrued, such as \$100. Until the accrued royalty reaches that amount, it is held by the company. A well that is on its last legs may take quite some time to accrue the minimal amount to pay a royalty.

No shut-in royalty payment is required in the lease. A shut-in well is one that has been drilled, but for any of a number of reasons is off-line or “shut-in.” Many oil and gas leases, such as the industry standard referred to as the [Producer 88](#) state that a landowner will be paid a shut-in royalty, but only if certain conditions are met. It is common for a payment to be a few dollars per acre per year, but can be negotiated higher, and is paid until the well is no longer shut-in. For example, the lease may state **“If all wells on said land, or on lands pooled or unitized with all or part of said land, are shut in”**. In this case, a shut-in well payment will not be paid if the well is part of a multi-well unit and all wells associated with the well in question are also shut-in.

The well operator has received a change in well status. For example, a particular well that produced for a time, may be converted for use as an observation well to determine the effectiveness of a secondary recovery operation, such as water flooding. Secondary recovery is a term for techniques used to increase the amount of [crude oil](#) that can be extracted from an oilfield, usually older oil and gas fields. It is used when there is not adequate pressure to push the oil to the well bore. Water flood can re-inject the brine water that flows to the surface with oil and gas back into the formation to increase pressure and cause the remaining hydrocarbons to migrate to the target well. A change in well status of this type does not require landowner notification.

The operator has been approved to re-classify the well as an injection well. An operator can convert a previously drilled oil well to an injection well by submitting an application change of well status (ACOWs) and the information required in Rule 201(2)(k)(i) through (ix) of [Michigan Oil and Gas Regulations](#). If your oil and gas lease has language similar to this: **“establish and utilize wells and facilities for disposition of water, brine or other fluids”**... the well operator can convert the well to an injection well and dispose of not only fluids from your well, but from other lands as well. This lease language allows the operator to operate the injection well and not pay the landowner/mineral owner for this usage.

The operator has been granted permission to temporarily abandon the well. The costs to drill, equip, produce and maintain a well can be significant. If there are temporary conditions that do not allow the well to operate for its intended purpose, the operator can request temporary abandonment status. Items such as future deepening or re-completion, conversion to another well type, processing constraints, and connection to a sales line are approvable reasons. It is allowed only upon written application to, and approval of the Supervisor of Wells. If the well has not been used for its permitted purpose during 12 consecutive months, the operator is

required to plug or produce the well, unless the well is granted temporary abandonment status. The term of the initial temporary abandonment status shall not be more than 12 months, unless the well is shut-in awaiting the connection of a sales line. For a well that is shut-in awaiting connection of a sales line, the term of the initial temporary abandonment status shall be up to and including 60 months. Additionally, extensions of temporary abandonment status beyond the initial term may be granted by the supervisor if conditions warrant. When approving the extensions, the supervisor may require special actions and monitoring.

Landowner Options:

As you can see, there are many reasons a well may not be paying the mineral owner, but that does not mean there are not options if your goal is to require the company to either comply with the rules, or abandon the well permanently and cancel the lease.

Negotiate an acceptable lease initially. Remember: An ounce of prevention is worth a pound of cure. Before you sign an oil and gas lease, make sure you understand whether or not provisions mentioned above are included and if not acceptable, negotiate changes or do not sign a lease you will not be happy with long-term. Negotiating the removal of the words **“permanently ceased”** and substituting **“in paying quantities”**, along with other language dealing with what triggers lease termination can provide the landowner with more clout to ask that the lease be canceled. The examples above are reasons why it is said that oil and gas leases can last for generations. This is great if you are receiving a royalty, but for those mineral owners that have not received a royalty in some time and no longer want an oil and gas lease encumbering their property title, it can be frustrating.

The Michigan Office of Oil, Gas and Minerals (OOGM) has developed an on-line database that allows the public to access oil and gas well information. You can use the site to determine the [current status of the well](#). This can help you determine if the well is still considered an operational well, is temporarily shut-in etc. The well permit number is necessary. If you have difficulty, you can contact your [district office](#) and they can look up the information for you. Rule R 324.903 of Michigan’s oil and gas regulations states: “A permittee of a well shall commence plugging operations within 90 days after drilling completion or well completion as a dry hole, when the well has not economically produced or has not been utilized for its permitted use for more than 12 consecutive months, when a change of well status has not been granted, or when the permitted use has been suspended for more than 12 consecutive months”. As the rule is interpreted by the OOGM, the permittee, in some instances, can theoretically pump the well one time per year and satisfy the 12 month rule. The supervisor may require, or a permittee may submit, proof that is necessary to determine if the well is being economically produced. If there is not sufficient evidence to allow the well to continue, the supervisor can order it to be plugged.

If you have questions about the production or status of your well, contact the OOGM in your region, or use the on-line information to retrieve oil and gas records.

Chesapeake Energy Ordered to Pay Michigan Landowner/Mineral Owners Disputed Oil and Gas Lease Bonus Payments

Affected Landowners and Mineral Owners that have not yet come Forward have 120 days to File a Claim

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In 2010, Chesapeake Energy refused to pay lease bonuses on signed oil and gas leases. These bonuses were up to \$3,500 per acre. This was devastating to many landowner/mineral owners, many of which had negotiated this payment as part of lease negotiation, or had an oil and gas attorney negotiate on their behalf.

During the summer of 2010, [Michigan State University Extension](#) and the [State of Michigan Office of Oil, Gas and Minerals](#) held nine public oil and gas leasing and oil and gas industry educational workshops in Northern Michigan. Total attendance was 2,179. Landowners and mineral owners were being contacted by representatives of oil and gas companies and were being offered an oil and gas lease to sign. For many, this was the first time they had an opportunity to lease their oil and gas rights. They wanted information to educate them on oil and gas production and the leasing process.

Workshop Topics included:

1. Unconventional Shale Gas Development
2. The Department of Oil, Gas and Minerals role in oil and gas production and regulation of the industry
3. Understanding the oil and gas lease
4. Bringing it all together in a negotiated win-win lease.

Susan Topp of Topp Law frequently volunteered her time to speak at these workshops, discussing the oil and gas lease contract and negotiating the lease.

During the summer of 2010, many landowners signed leases with representatives of Chesapeake Energy Corporation. Not long after signing, the oil and gas leasing market collapsed. Chesapeake in their review of the signed leases disqualified them and refused to make payment for various reasons that some experts, including Susan Topp felt were not legitimate.

On October 21, 2010 Michigan State University Extension, along with attorney Susan Topp, held an informational meeting at the Emmett County Community Building. The title of the meeting was “Duties and Obligations of an Oil and Gas Company under the Lease and Order for Payment.” The goal of the workshop was to help landowner/mineral owners understand the issues and inform them of their legal options going forward.

Over one hundred thirty people joined together and hired Susan and filed civil actions against Chesapeake. Over the years many settled with Chesapeake for a total of \$19 million, which was less than the contracted bonus. Encana, USA honored their leases and paid the lease bonus.

The [Michigan Attorney General's Office](#) felt laws were broken and filed criminal complaints against Chesapeake and Encana, USA. In May of 2014, Encana, USA settled for \$5 million with the state. Chesapeake chose to go to trial and during the trial, has agreed to pay a settlement of \$25 million. The \$25 million will bring total compensation to \$44 million and all qualifying landowner/mineral owners that signed leases with Chesapeake may be eligible to be compensated 100% for their losses. The victims named in the criminal complaints filed by the Attorney General’s Office are the only mineral owners that can have their attorney fees reimbursed due to criminal law limitations.

It is estimated there are more than 700 landowner victims. Victims that have not yet come forward in the last four years will have 120 more days to file a claim. If victims that had their oil and gas lease cancelled in 2010 need help filing their claims, it is recommended they contact Susan Topp at 989-731-4014 for assistance or to get additional information.

Large Volume Hydraulic Fracturing Water Use in 2014

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In the Oil and Gas News on March 13, 2015 Mark Snow from DEQ was interviewed and said that in 2014 there were 2 million gallons of water used in the state of Michigan for high volume hydraulic fracturing. “Snow noted that total water use in 2014 was 2 million gallons. The highest recorded water use for high volume hydraulic fracturing was in 2012, when 55 million gallons were used – which is .03% of the total 159,552 million gallons used in agricultural operations in Michigan that same year”¹.

¹ “DEQ’s Mark Snow briefs Northern Michigan API on state oil and gas regulatory changes March 5,” *Michigan Oil and Gas News*, 13 March 2015, page 1.

Landowner Informational Meetings

Mineral Rights Town Hall Meeting Mason, Michigan (Ingham County)

Sponsored by State Representative Tom Cochran, Ingham County

June 22

5:30 to 7:30 PM

Mason Historical Museum 200 E. Oak Street, Mason, MI 48854

Speakers: Mark Snow Permitting Supervisor DEQ Office of Oil, Gas and Minerals; Kristine Shimko Field Geologist with the DEQ Office of Oil, Gas and Minerals; Curtis Talley, Michigan State University Extension Farm Business Management Educator with experience dealing with landowner oil and gas leasing and pipeline easements

Topics:

- How is the oil and gas industry regulated in Michigan?
- What is directional drilling?
- What is hydraulic fracturing?
- Can I be forced to participate in oil and gas development even though I do not want to?
- Why is Statutory (Compulsory) Pooling something to not be afraid of?
- What is an injection well and does the lease allow them on my property?
- Can I prevent hydraulic fracturing in my lease?
- What are post production costs and do they reduce my royalty?
- How do oil and gas operations co-exist in residential areas?
- What pitfalls should be avoided?

Please Share Your Oil and Gas Experiences

The editor is very interested in hearing both your positive and negative experiences dealing with oil and gas leasing or production. All information is kept confidential and is combined with data from other landowners to analyze the effectiveness of the educational effort. Report your experiences to the editor by phone at 231-873-2129 or talleycu@anr.msu.edu e-mail.

This newsletter is intended for landowners and other members of the public with interest in the oil and gas industry. If you would like to be added to the e-mail list to receive this newsletter, please contact the editor. You can also contact your local county MSU Extension Office to obtain copies of the newsletter and other free oil and gas leasing information.